IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 26852 of 2006(V)

PETITIONER:

FRANCIS JUDE NETTO, ADVOCATE,
LISUE VILLA, KULANGARA BHAGOM,
CHAVARA, KOLLAM DISTRICT.

BY ADV. SRI.C.R.SIVAKUMAR

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED
BY THE SECRETARY, LAW (INSPECTION WING
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM).

2. THE DISTRICT COLLECTOR,
COLLECTORATE, KOLLAM.

BY GOVERNMENT PLEADER SRI.P. NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 26852 of 2006(V)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT-P1: TRUE COPY OF THE APPOINTMENT ORDER DATED 23/06/2005

EXHIBIT-P2: TRUE COPY OF THE SANCTIONING ORDER DATED 07/07/2006

EXHIBIT-P3: TRUE COPY OF THE COVERING LETTER ISSUED BY THE DISTRICT COLLECTOR, KOLLAM TO THE SECRETARY, BAR ASSOCIATION, KOLLAM

EXHIBIT-P4: TRUE COPY OF THE REPORT OF THE DISTRICT JUDGE, KOLLAM

EXHIBIT-P5: TRUE COPY OF G.O (MS) BI,113/07/LAW DATED 07/06/2007

/TRUE COPY/

P.A. TO JUDGE

K. BALAKRISHNAN NAIR, J.

W.P.(C) No.26852 of 2006 (V)

Dated this the 15th June, 2007.

JUDGMENT

The petitioner was an Additional Government Pleader and Public Prosecutor at Kollam. Ext.P1 is the order issued by the Government on 23.6.2003, appointing him for a period of three years. While so, the respondents took steps to appoint a new set of Additional Government Pleaders and Public Prosecutors. This writ petition was filed, apprehending that he would be terminated. Initially, there was an interim order in his favour. But, that as vacated on 30.5.2007. Thereafter, the Government terminated his service under Rule 17 of the Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978. So, the petitioner amended the writ petition, challenging the said order. Relying on Ext.P5, the petitioner points out that incompetent persons are sought to be chosen for appointment in the place of the petitioner and other Government Pleaders, whose services were terminated. So, the petitioner prays to quash Ext.P5 order and seeks consequential reliefs.

The Government have filed counter affidavit, in which it is submitted as follows:

> "The Government is justified in selecting the best talent available for representing them. It is a policy decision of the Government to appoint more competent lawyers and lawyers on whom the Government have sufficient confidence as Government Pleaders. The decision of the Government, it is respectfully submitted, cannot be subjected to judicial review."

They have also filed an additional counter affidavit, in which the charge of the petitioner, that inefficient persons are being appointed, is dealt with. According to the respondents, the District and Sessions Judge has not specifically disapproved any names, giving specific grounds as contemplated under Rule 8(2) of the aforementioned rules. So, the appointment, sought to be made by the Government, cannot be faulted, it is submitted.

The point raised by the petitioner is covered against him by the Division Bench decision of this Court reported in **Mohammed Ashraf v. State of Kerala (1991 (2)**

818), which was followed by another Division Bench in the judgment in Writ Appeal No.458 of 2007. In view of the principles laid down by this Court in those decisions, the petitioner cannot claim retention in service. Even assuming that a less competent person is being appointed in his place, that will not affect the validity of the termination of the service of the petitioner. In other words, the petitioner is not concerned whether the person appointed in his place is an efficient lawyer or not.

In the result, this writ petition fails and is dismissed.

K. BALAKRISHNAN NAIR,
JUDGE.

vav.